

IG-8471  
Change 3

LAW ENFORCEMENT AUTHORITIES

Arrests

APPROVAL/TRANSMITTAL

Replace exhibit A of IG-8471, dated May 1995, with the attached revised exhibit A (FD-249 (Rev. 12-1-94)).

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ROGER C. VIADERO  
Inspector General

LAW ENFORCEMENT AUTHORITIES

Arrests

APPROVAL/TRANSMITTAL

This section provides background, policy, and procedures for making an arrest with or without a warrant. It also contains procedures regarding OIG investigations involving fugitives, and the Memorandum of Understanding (MOU) entered into by OIG and the United States Marshals Service (USMS).

Due to the extent of the revisions, read the entire directive to familiarize yourself with current arrest procedures. This supersedes IG-8471, dated January 1983. Remove and destroy previous editions.

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ROGER C. VIADERO  
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A. BACKGROUND

1. Authority. Section 1337 of the Agriculture and Food Act of 1981 (7 U.S.C. 2270) provides, in part, that:

"Any person who is employed in the Office of the Inspector General, Department of Agriculture, who conducts investigations of alleged or suspected felony criminal violations of statutes, including but not limited to the Food Stamp Act of 1977, administered by the Secretary of Agriculture or any agency of the Department of Agriculture and who is designated by the Inspector General of the Department of Agriculture may--

(1) make an arrest without a warrant for any such criminal felony violation if such violation is committed, or if such employee has probable cause to believe that such violation is being committed, in the presence of such employee;

(2) execute a warrant for arrest . . . if such warrant is issued under authority of the United States upon probable cause to believe that such violation has been committed . . .

(A 1)

in accordance with rules issued by the Secretary of Agriculture, while such employee is engaged in the performance of official duties under the authority provided in section 6, or described in section 9, of the Inspector General Act of 1978 (5 U.S.C. app. 6, 9). The Attorney General of the United States may disapprove any designation made by the Inspector General under this section."

2. Federal Rules. Rules 3, 4, 5, and 9 of the Federal Rules of Criminal Procedure (18 U.S.C.) describe procedures which must be followed in making arrests.

3. Planning an Arrest. The execution of an arrest warrant is potentially dangerous because people react in unpredictable ways when arrested. Every OIG employee who manages, supervises, or assists in the execution of an arrest warrant should be mentally and physically prepared for any eventuality. Careful planning can eliminate some risks and reduce others. Caution, common sense, good judgment, and preparation are essential for the safe execution of an arrest warrant.

4. Investigations Involving Fugitives. The OIG and USMS have signed an MOU regarding procedures to be followed in OIG investigations involving fugitives. In this MOU, OIG delegates responsibility to the USMS for National Crime Information Center (NCIC) input regarding fugitives. The MOU also provides for prompt 24-hour notification to OIG by the USMS when a fugitive in an OIG investigation is apprehended or located. The notification will be made by the USMS Communications Center to the PID Direct Line Duty Agent, who, in turn, will promptly notify the appropriate OIG personnel.

Notify the D/PDOTD when the initial NCIC entry is made for a fugitive. The D/PDOTD will maintain a consolidated list of all open OIG fugitive arrest warrants for use by the PID Direct Line Duty Agent.

B. Policy. When the need to make an arrest is reasonably foreseeable, a warrant shall be obtained unless the case supervisor and DOJ attorney agree a warrant is not desirable. The arrest shall be made in accordance with the provisions of 7 U.S.C. 2270, Rules 3, 4, 5, and 9 of the Federal Rules of Criminal Procedure (18 U.S.C.), any rules of the judicial district involved, and this directive.

C. PROCEDURES

1. Warrantless arrests should only be made when absolutely necessary, e.g., when an SA is assaulted, or if a felony violation occurs in an SA's presence and failure to arrest would unduly burden the investigation or substantially increase the potential for danger, escape, or the destruction of evidence. If possible, a warrantless arrest should be discussed with the SA's supervisor and a DOJ attorney prior to the arrest.

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2. All participating law enforcement officers should be briefed on their individual assignments in the execution of an arrest. Unless an operation will be compromised, notify the local law enforcement agency of arrest plans. Whenever possible, include a uniformed police officer on the arrest team. If it is determined that an arrestee's minor child may be present, and no other parent or guardian will be at the arrest scene to take responsibility for the minor, refer the matter to the local law enforcement agency.

3. The case agent or the SA on the scene with the most knowledge of the subjects to be arrested will coordinate the arrests. Establish clear lines of authority and communicate those lines to all arrest team members. A suitable number of law enforcement officers shall participate in an arrest of an individual so that the arrest can be executed safely and effectively. Only under exigent circumstances should an SA attempt to effect an arrest alone. SA's must wear their protective vests when making arrests; however, exceptions are permitted for situations when wearing the vest would compromise an assignment, or place an SA in even greater danger. SA's will use only the amount of force necessary to effect an arrest. All arrestees will be thoroughly searched for weapons and evidence, and to inventory personal possessions.

4. In processing individuals who have been arrested, SA's will take two sets of fingerprints on FBI standard criminal fingerprint cards (form FD-249) (exhibit A). One card will be filed in an envelope in the case file and the second card forwarded to the FBI Identification Division. A third set of fingerprints will be taken on a Final Disposition Report (form R-84) (exhibit B), following the instructions on the back of the report. At case closure, Supervisors will ensure that the Final Disposition Report has been completed and sent to the FBI for those judicial districts where the AUSA or the court do not handle the R-84 form. If fingerprints are taken by the USMS or another law enforcement agency, the "SEND COPY TO" box will indicate the correct OIG office address and NCIC Originating Agency Identifier so OIG will receive a copy of any criminal history.

Two full face (head and shoulders) and two profile photographs will be taken. A completed Photo Backer, form OIG 8471-3 (exhibit C), will be attached to the back of each photograph. The photographs will be filed with the fingerprint card in the case file. A Personal History Summary, form OIG 8471-2 (exhibit D), will be completed and filed in the case file. If the arrestee is processed by the USMS or another law enforcement agency and that agency records similar personal history information on its own forms, a copy of that agency's form may be substituted for the OIG form in the case file.

5. If the subject of an arrest warrant is not apprehended, the appropriate USMS office shall be notified of that fact within 48 hours of the warrant issue date regardless of OIG intentions concerning ultimate primary apprehension responsibility. In cases where the USMS will be requested to assume primary apprehension responsibility, the request shall be made within

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48 hours, but not later than 7 days, of the warrant issue date. Provide the appropriate USMS office with a completed Personal History Summary (form OIG-8471-2) for a fugitive within 48 hours of the USMS being requested to enter a fugitive in the NCIC system. The Personal History Summary must include the fugitive's name, DOB, height, weight, and sex. The USMS will not make NCIC entries on sealed indictments or on "John Doe," last name unknown (LNU), or first name unknown (FNU) arrest warrants. The original arrest warrant shall be in the possession of the appropriate USMS office. Provide the D/PDOTD with one copy of the arrest warrant, the completed Personal History Summary, and the NCIC entry for the fugitive.

6. Juveniles are persons who have not attained their 18th birthday at the time of arrest. In addition to the prearrest procedures applicable to adults, section 503 of the Juvenile Justice and Delinquency Prevention Act of 1974, 88 Stat. 1109, 1135 (codified as amended at 18 U.S.C. 5033 (1994)), requires the following actions.

(a) Immediately advise juveniles of their "legal rights" in language comprehensible to the juveniles.

(b) Notify the U.S. Attorney and the juvenile's parents or guardian of the arrest.

(c) Do not interview juveniles for a confession or admission of guilt, or even an exculpatory statement, between the time of arrest for a Federal offense and their appearance before the magistrate.

(d) Do not fingerprint or photograph juveniles unless they are to be prosecuted as adults.

(e) Refrain from making public any information concerning the identification of arrested juveniles.

(f) Take arrested juveniles forthwith before a magistrate. Only the magistrate can release juveniles.

The SA's notes will record the above actions.

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Exhibit A(1)  
of IG-8471

Exhibit A(2)  
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Exhibit B  
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